

REPORT

Of the Committee of Claims, to which was recommitted, on the 18th instant, their report on the petition of the Levy Court of Calvert County, in the state of Maryland.

DECEMBER 19, 1823.

Read, and committed to a Committee of the Whole House to-morrow.

The Committee of Claims, to whom was recommitted their report in the case of the Levy Court of Calvert County,

REPORT:

In relation to this claim, Commodore Joshua Barney addressed a letter to a member of the Committee, under date of February 18th, 1818. From this letter the Committee beg leave to offer an extract, as follows, viz: "*I have received another letter from General Stewart, requesting me to state what I know respecting the destruction of Calvert Court House, occasioned, as he says, by the occupation of it by my men. This is another misstatement, as my men never occupied the Court House, having tents, &c. for their use near it.*"

The foregoing extract of a letter from Commodore Barney, who had command of the Flotilla at the time of the alleged destruction, corroborates the opinion of the Committee heretofore expressed in relation to the inadmissibility of this claim, and serves to explain why the petitioner did not obtain his certificate as required by the act of 1816.

The following resolution is submitted:

Resolved, That the prayer of the petitioner ought not to be granted.

Report made at the Second Session of the 17th Congress.

The Committee of Claims, to whom was referred the petition of the Levy Court of Calvert County, in the state of Maryland, have had the same under consideration, and offer to the House the following Report:

It is alleged in the petition that, during the summer of 1814, while Commodore Barney's flotilla was blockaded in St. Leonard's

Creek, the Courthouse of Calvert county was occupied as a place of deposit for military stores, and as a Hospital for the wounded men belonging to the flotilla.—On the landing of the British, they proceeded to the Courthouse, a few days after it had been evacuated by Commodore Barney's flotilla men, and burnt it. For this loss the Levy Court ask Congress to pay them three thousand dollars.

This claim has often been before Congress, and as often rejected, if acted on definitively; but, it seems, that no precedent against a claim is to be binding, while every one in its favour is construed into a sanction of all analogous demands. In re-examining this case, therefore, the Committee will present a concise view of some of the principles by which their decisions have been regulated.

The 9th section of the Act of 1816, authorizing payment for property lost, captured or destroyed, during the late contest with Great Britain, intended to provide indemnity only for such losses as should result to our citizens, in the course of a regular and civilized warfare. It certainly could not have been designed to make payment for all the outrages, or wanton excesses, of an infuriated and revengeful enemy. If a rule of this kind should be adopted, it would, in effect, be an invitation to the enemy to direct his efforts against the property of the people, and, of course, the pecuniary resources of the nation, rather than aim at achievements in the field of honorable conflict. It would, likewise, have a tendency to release the citizen from that obligation he is under to defend his own property; for, if government should invariably compensate him for his loss, it would, as regards the destruction of his property, be a matter of perfect indifference whether or not it was defended.

These are briefly the reasons which have induced the Committee to think that Congress did not intend to provide payment for all losses, without reference to their character or description. If this interpretation be correct, the loss complained of by the Levy Court of Calvert County cannot be urged as forming a proper demand against the government of the United States; because, in the opinion of the Committee, it was a wanton and outrageous act on the part of the enemy.

By the 10th section of the Act, it is provided, "That the loss or destruction, as well as the value of the property, shall be ascertained by the best evidence the nature of the case will admit of"—and, by the 12th section it is further provided, that "The Commissioner of Claims shall establish, under the direction, or with the assent, of the President of the United States, such rules, as well in regard to the receipt of applications of claimants to compensation for losses provided for by this Act, as the species and degree of evidence; the manner in which such evidence shall be taken and authenticated, as shall, in his opinion, be the best calculated to attain the object of this act."

The rules established under the direction, or with the assent, of the President, become a part of the law, and have not, in this case, been complied with. The Committee cannot refrain from the belief,

that they were intentionally evaded, because they required that the evidence should be adduced of the superior officer in command, who directed the occupation of any house. But in this case the evidence neither of Commodore Barney, or Captain Rutter, has been adduced, and if the claim was allowable upon principle, the testimony would be insufficient to sustain it. The Committee therefore recommend that the prayer of the petitioners should not be granted.

Be it known, that, pursuant to a law of the United States, entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes." passed on the 9th day of April, in the year 1816, that I, Richard Bland Lee, duly appointed by the President of the United States, by and with the advice and consent of the Senate, commissioners, to decide on certain cases arising under the aforesaid act, reposing special confidence in your honesty, ability, and diligence, have constituted and appointed, and by these presents do constitute and appoint you, Joseph Wilkinson, William S. Morsell, and Thomas H. Wilkinson, gentlemen, commissioners, (any one or more of you to act,) to take the testimony of such witnesses as may be brought before you, or any of you, either by your own summons or otherwise, an oath or affirmation in due form, being first administered, relative to a certain claim of the Levy Court of Calvert county, in the state of Maryland, against the United States; a particular description of which is contained in the annexed schedule, conforming yourselves in all respects to the rules and directions hereto attached. And all testimony, so taken by you, you shall certify under your hands or hand, (as the case may be,) and having duly executed the duties required by this commission, you shall return the same, with a report of all your proceedings thereon, under your seals or seal, (as the case may be,) to this office, on or before the first day of January next.

In testimony of the premises, I, the said Richard Bland Lee, have to these presents, at my office in the city of Washington, affixed my signature, this seventeenth day of October, in the year 1816.

RICHARD BLAND LEE,

Rules and directions to the Commissioners.

1. You will summon before you and examine the following witnesses on the part of the United States: namely, _____, generally as to their knowledge of the matter in controversy, and as to the character of the witnesses produced by the claimant, if you shall deem this precaution necessary.

2. You shall examine the witnesses produced by the claimant; but no testimony must be taken but in conformity to the rules prescribed by the notice from this office of the 3d of June, 1816, referring for

your direction to the class of cases to which the particular claim before you belongs. A copy of which notice is therefore herewith inclosed.

3. Every witness examined must, in the first place, swear, or affirm, that he has no interest, directly or indirectly, in the claim.

4. In your report if you have doubts concerning the credibility of the witnesses, derived from their general character, or other circumstances, you must state the grounds of such doubts.

Statement of the claim of the Levy Court of Calvert county.

For the destruction of the Court-house of the said county, by the enemy, in consequence of its having been in the military occupation of the United States, as a military deposite,

\$5,000 00

For the destruction of the Jail, occupied as aforesaid,

1,800 00

This claim falls under the sixth class of cases.

R. B. LEE.

STATE OF MARYLAND, }
Calvert county, } ss.

At the execution of a commission issued by Richard Bland Lee, Esquire, directed to Joseph Wilkinson, William S. Morsell, and Thomas H. Wilkinson, or any one or more of them, to take the testimony of such witnesses, as might be brought before them, an oath or affirmation, in due form, being first administered, relative to a certain claim of the Levy Court of Calvert county, against the United States, we, the said Joseph Wilkinson, William S. Morsell, and Thomas H. Wilkinson, the commissioners therein named, having met at Hunting town, in the county and state aforesaid, on this twenty eight day of October, in the year of our Lord one thousand eight hundred and sixteen, pursuant to appointment and notice thereof given, proceeded to take the following depositions, to wit:

No. 1. George W. Crane, of lawful age, being first sworn on the Holy Evangely of Almighty God, deposeth and saith, that, some time previous to the burning of the court-house, by the enemy, Captain Rutter, a commander of one of the boats belonging to the flotilla of the United States, under the command of Commodore Barney, asked him, this deponent, for the key of the court-house, and on his, this deponent's answering, that he believed that there was no key belonging to it, (meaning the court-house) he (Captain Rutter) observed,

that he must get possession of it, (meaning the court-house) if he, (Captain Rutter) was obliged to break open the door; that afterwards, said Rutter, with a number of men, supposed by this deponent to belong to the flotilla, did take possession of the said house, and did deposit therein a number of arms and other military stores; that the sick and wounded men were brought to, and accommodated in the said court-house, and that the said court-house remained in the possession and occupation of said Rutter and men, until a few days before its destruction by the enemy, and further this deponent saith not.

No. 2. Elizabeth Crane, of lawful age, being first duly sworn on the Holy Evangely of Almighty God, deposeth and saith, that when the British came to the court-house of Calvert county, she was there, and that, in conversation with some of the officers, (meaning the British officers) she solicited them (the British officers) not to burn the court-house; that they (the British officers) replied, she (this deponent) might thank Commodore Barney for its (meaning the court-house) being burnt; that if he and his men (meaning Commodore Barney and his men) had not been harbored in the said court-house, it would not have been burnt, and they (the British) would not have come to it, (meaning the court-house) and further this deponent saith not.

No. 3. Thomas Billingsly, of lawful age, being first sworn on the Holy Evangely of Almighty God, deposeth and saith, that, on the day the court-house was burnt by the enemy, that a British officer told him, this deponent, that he, (the British officer) with a parcel of troops, had been to the said court-house, in consequence of hearing, and with an expectation of meeting with Commodore Barney there, (meaning at the court-house;) but on his (the British officer's) arrival there, (meaning at the court-house) he, the said Barney had run away, but that he (the British officer) knew he (the said Barney) had been there, (meaning at the court-house,) from the appearance of tents having been erected, and the exercise of cannon on the ground before the said court-house, and from other appearances of its (meaning the court-house) having been made a military stand, and that he, the said British officer, had caused the said court-house to be burnt in consequence thereof; and further this deponent saith not.

No. 4. Doctor Thomas Hamilton, of lawful age, being first sworn on the Holy Evangely of Almighty God, deposeth and saith, that, in the summer of 1814, while the flotilla of Commodore Barney was blockaded in St. Leonard's Creek, by a British squadron, he was the Surgeon to said flotilla, and, during that time, he, together with Captain Rutter, second in command of said flotilla, took possession of the Court House of Calvert County, and occupied it for some considerable time as an Hospital for the sick and wounded; and, also, as a military store house to keep medicinal and other stores in, and for other purposes—that, around the court house, cannon was planted, and it was guarded as a military post, and would have been de-

fended as such against any equal force of the enemy—and, further, this deponent saith not.

No. 5. John Ireland, John J. Patterson, and Alexander Skinner, all of lawful age, being first sworn on the Holy Evangely of Almighty God, depose and say, that they were well acquainted with the court house previous to the burning thereof by the enemy, and that they believe the same to have been worth, at the time of its destruction, the sum of - - - - - \$3,100 00
And that the materials remaining were worth - - - - - 100 00

Leaving the sum of - - - - - \$3,000 00
the amount of the real damage sustained by the said destruction—and, further, these deponents say not.

No. 6. Sutton J. Weems, John G. Mackall, John T. Bond, Alexander Brome, and Thomas Billingsley, Justices of the Levy Court of Calvert County, being first sworn on the Holy Evangely of Almighty God, depose and say, that they have not received any compensation from any officer, agent, or department of the Government of the United States, for the destruction of the court house of said county, and for which they now demand indemnification; and that they did not agree with any officer or agent of the United States to run any risk on account of the employment or use of the same in the public service, and that they have not received any other voucher or certificate relating to their claim from any officer or other person at any time except what is now exhibited before the commissioners—and, further, that they have used diligent and proper means to procure the testimony of Captain Rutter who was the commanding officer at the said court house, but could not procure it, owing to his, the said Rutter, being at sea, as they have been informed, and that the testimony which they have procured is the best that they could get in the case—and, further, say not.

We beg leave to return that, in virtue of the annexed commission to us directed, we have taken the testimony of all such witnesses as have been produced to us, on oath, relative to a certain claim of the Levy Court of Calvert County against the United States, and caused the same to be fairly and truly written down, as by the said commission we are directed—all which, together with the said commission, we return closed, under our hands and seals, this 7th day of December, Anno Domini, 1816.

JO. WILKINSON, [SEAL.]
WILLIAM S. MORSELL, [SEAL.]
THO. H. WILKINSON, [SEAL.]

November 7, 1821.

Being called on by several gentlemen of Calvert county, respecting Commodore Barney's taking possession of the Court House for his flotilla-men, and also for a store house, I do hereby certify that

Commodore Barney told me that he had taken the Court House of Calvert county as a place of deposit for his military stores and for his men.

SOLOMON FRAZIER,
Com'g 3d division of Com. Barney's Flotilla.

ANN ARUNDEL COUNTY, ss.

On the 11th day of December, 1821, appeared Solomon Frazier before the subscriber, a Justice of the Peace for said county, and made oath that the facts as stated in the above certificate are true to the best of his knowledge.

GIDEON WHITE.

MARYLAND, DORCHESTER COUNTY, TO WIT:

I certify, to the best of my recollection, in the year 1814, I had the command of one of the United States' flotilla, under Commodore Barney. Some time in June in the same year, express orders were sent from Commodore Barney to the Lazaretto, Baltimore, for me and all my men to proceed down to St. Leonard's Creek, where Commodore Barney's flotilla was then under blockade. However, these orders were fully executed; and, when I got down to the said creek, I reported myself and men to Commodore Barney. I staid there that night; next day Mr. Dernor, an officer of the United States' flotilla, came to me to inform me that the Commodore would wish to see me. I immediately went to the Commodore, and then he gave me the following orders, that is to say: You must immediately, with your men, arms, ammunition, and baggage, proceed on to Calvert county Court House, in order to guard the military stores that will be brought there for the use of the United States' flotilla. Accordingly, I went on with my men to the said Court House; got there that night, fixed my guards, and, as fast as the stores were brought on, I had an account taken of them, and they were put in the said Court House. It is certain that the military stores were kept in the said Court House, and my men drew their rations in the said House, and the wounded men that were brought from St. Leonard's Creek were put in the said Court House, and their wounds were dressed by the Doctors in the said Court House, and continued in the said house until Commodore Barney gave orders to evacuate the place.

Given under my hand this 9th day of December, 1821.

WILLIAM BYUS.

On the day as above, personally appeared William Byus before me, a Justice of the Peace for Dorchester county, and made oath on the Holy Evangely, that the facts stated in the above certificate are just and true. Sworn before

THOMAS LEE.

MARYLAND, SS.

On this eleventh day of December, eighteen hundred and twenty-one, personally appears before me, one of the state of Maryland's Justices of the Peace, in and for Anne Arundel County, William D. Merrick, of Charles County, and state aforesaid, and makes oath, that, early in the summer of 1814, he, as a Lieutenant in the 36th regiment of United States' infantry, was on duty with a detachment of that regiment in Calvert County; that, while there, and immediately subsequent to the attack made by Colonel Wadsworth upon the British vessels lying near the mouth of St. Leonard's Creek, he marched with the infantry troops to the Court House of said county, and, upon arriving there, he found the Court House in the use and occupation of persons belonging to the flotilla, then commanded by Commodore Barney, and, from the munitions of war, and wounded men he found there, it appeared that the house had been converted into a military store house and hospital for the flotilla. Whether this house had been taken possession of by the orders of the Commodore or not, deponent is unable to say; but certain it is that the men and munitions of war deposited there, had been landed from the flotilla. As to what was the moving cause with the enemy for destroying this house, deponent is unable to say, as he had before that time been transferred to a different station; however, from the known and uniform practice of the enemy to destroy all houses which had been in any wise used or occupied by the troops of the United States, it is fair to presume, that it was to its occupation by the flotilla men, as above stated, that the citizens of Calvert owed the loss of that house.

Sworn before

GIDEON WHITE.